STATE OF MONTANA BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO. 1283-c41-0 BY ELAINE E. SCOTT	
Vit italia	

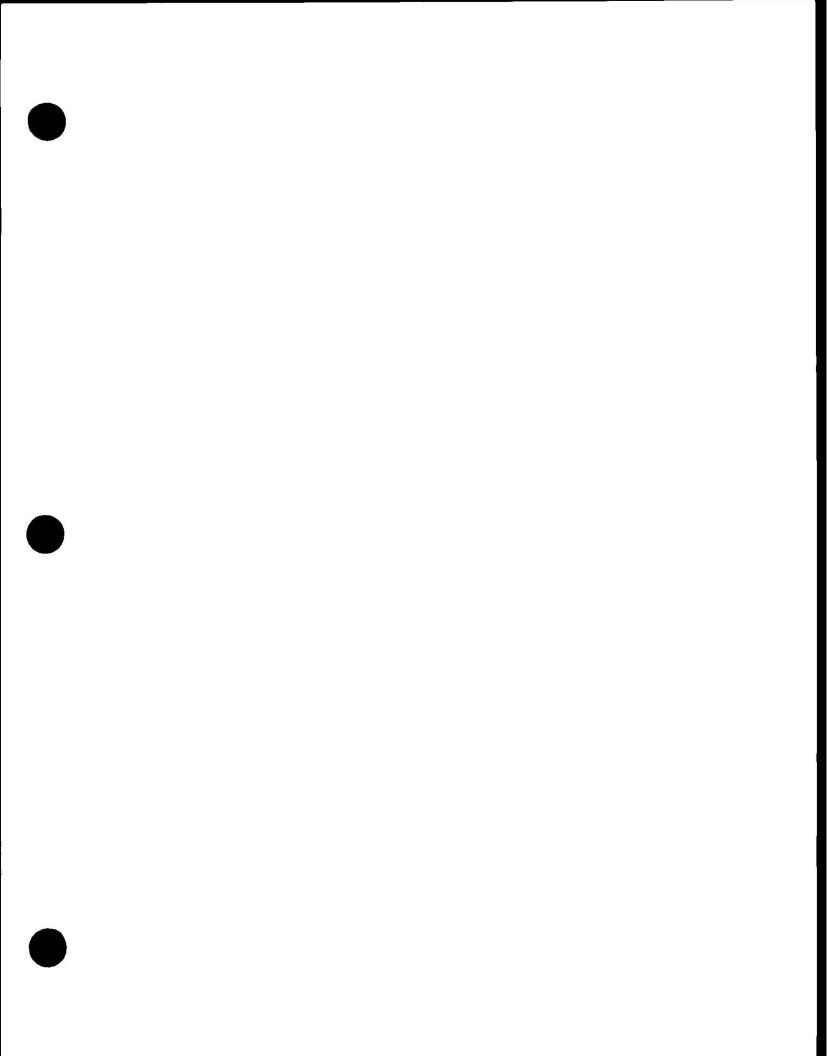
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

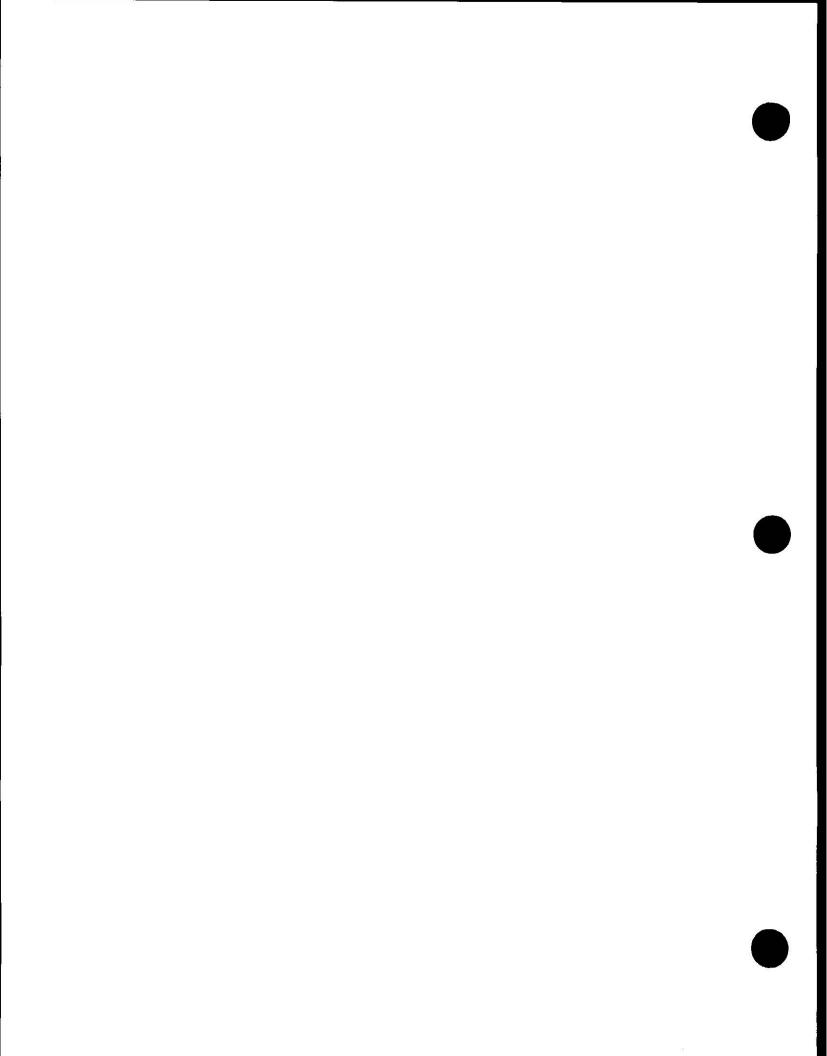
The Proposed Findings of Fact and Conclusions of Law in this matter entered on Movember 18, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

It is hereby ordered that the Application for Change of Appropriation Water Right, Application No. 1233-c41-0 be granted subject to prior existing water rights. If the water table should drop below the depth of 17 feet, that the applicant be prohibited from further pumping below the depth of 17 feet. Further, if it be determined that this well does definitely interfere with those prior existing rights, that this permit be modified so as to not interfere with those rights.

to not interfere	, 1974 <i>.</i>
	day of
Done this	
12-19-74	Pasaurces Division
per- Log	Administrator, Water Resources Division DEPARTMENT OF NATURAL RESOURCES
	AND CONSERVATION





BEFORE THE DEPARTMENT FILMED OF NATURAL RESOURCES AND CONSERVATION APR 5 1930

IN THE MATTER OF APPLICATION FOR CHANGE OF APPROPRIATION OF WATER RIGHT, NO. 1283-g410, ELAINE SCOTT

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act, Section 89-865, et seq., R.C.M.

1947, and after due notice a hearing was held on October 7, 1974, in Choteau,

Montana, for the purpose of hearing objections to the above-named Application.

The Applicant appeared with her Counsel, Larry Juelfs, Esq., and presented

testimony. The objectors, Jessie White, Mrs. Robert Swortzel and the City of

Choteau, represented by their counsel, Leo Murphy, Esq., appeared and presented

testimony. Choteau Cattle Co., Miriam R. Johnson, Ralph and Nai Dean Enzweiler,

Mr. Cecil Snyder, Mr. Gerald Palmer, and Dr. Marcus Johnson filed timely objections to the application but did not appear and present testimony at the hearing.

PROPOSED FINDINGS OF FACT

1. On January 7, 1974, at 4:10 p.m. Elaine Scott of Choteau, Montana, filed with the Montana Department of Natural Resources and Conservation, an Application for Beneficial Water Use Permit for a well to be drilled in the SE% of Section 23, Township 24 N., Range 5 West, Teton County, Montana. After deliberation the Department decided this should be considered an application for change of appropration water right. The application requests permission to drill a well six and one-half feet from an existing pit upon which the Applicant has a water right, such well to be drilled to a depth of 30 feet, the purpose of said change of point of diversion being to use the gravel and sand of the ground to fileter out dead fish and vegetable matter from the water so that it will not clog up her pump.

CASE # 1283

- 2. On July 22, 1974, the City of Choteau filed a timely objection to the application requesting that it not be granted because, "pumping this water and the additional strain has effected and will continue to effect the water available in the city wells in Choteau, Montana." On June 27, 1974, Jessie White filed a timely objection to the Application. On May 10, 1974, Mrs. Robert Swortzel wrote a letter complaining that a well had been drilled without proper notice having been given. The Department accepted this as a timely objection to the Application. As mentioned above, several others filed timely objections but did not appear and present testimony at the hearing. The well has been drilled at an approximate cost of \$750 pursuant to an interim permission given by L. Ralph Saunders of the Department of Natural Resources. The Applicant wishes to use the water from May 1 to September 30, inclusive, of each year, for the purpose of irrigation.
- 3. Testimony at the hearing also indicated that the objectors had no actual knowledge that the well would interfere with their prior appropriations. Mrs. Robert Swortzel testified that her house well had gone dry in July of 1973 but that the summer of 1973 was very dry and many wells in the vicinity had gone dry.
- 4. Leo Murphy, counsel for the City of Choteau, registered his objection that the well would be drilled to 30 feet whereas the present water right was only to a depth of 17 feet. Larry Juelfs, counsel for the Applicant, pointed out that the filed water right on the 17-foot-deep pit was for 1,000 gallons per minute, whereas the quantity produced from the 30-foot-deep well located six and one-half feet from the pit was only 200 gallons per minute.
- 5. Some testimony produced at the hearing tended to show that the applicant did mis-use the water, that is, by over irrigating the land, and also by irrigating late into the fall freeze. This evidence was not conclusive.

1

CONCLUSIONS OF LAW

- This was correctly filed as an Application for a Change of Appropriation
 Water Right, to change the point of diversion only.
- 2. The objectors all had existing water rights which could be adversely effected and must be protected by virtue of "first in time, first in right" mandate of Montana Water Law.
 - 3. The Applicant's existing water right is only to a depth of 17 feet.

PROPOSED ORDER

It is hereby ordered that the Application for Change of Appropriation of Water Right, Application No. 1283-g41-0 be granted subject to existing rights. If the water table should drop below the depth of 17 feet, that the applicant be prohibited from further pumping below the depth of 17 feet. Further, if it be determined that this well does definitely interfere with those prior existing rights, that this permit be modified so as to not interfere with those rights.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation, pursuant to Section 82-4212, R.C.M. 1947 and Rule MAC 1-1.6(2)-P6190. Written exceptions to this proposed Order shall be filed with the Administrator within five (5) days of service and this proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

James Lewis Hearing Examiner